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TO THE

MATTERS CONTAINED IN THIS VOLUME.

[The references are to the STAR (*) pages.]

ACCOUNTS.

1. Where a running account is kept at the Post-Office Department between the United States and a postmaster, in which the postages are charged to him, and credit is given for all payments made, this amounts to an election by the creditor to apply the payments, as they are successively made, to the extinguishment of preceding balances. *Jones v. The United States*, 681.
2. This the creditor has a right to do in the absence of instructions from the debtor. The English decisions and those of this court examined. *Ib.*
3. The act of Congress of 1825 (4 Stat. at L., 102), which exonerates the sureties if balances are not sued for within two years after they occur, does not apply to this case, because, by this mode of keeping the accounts, the balance due from the postmaster is thrown upon the last quarter. *Ib.*

ADMIRALTY.

See JURISDICTION, 30-34.

APPEAL.

1. Where an issue is sent by a court of equity to be tried by a jury in a court of law, and exceptions are taken during the progress of the trial at law, these exceptions must be brought before the court of equity and there decided, in order to give this court cognizance of them when the case is brought up by appeal. *McLaughlin v. Bank of Potomac*, 220.
2. Where a decree in chancery refers the matters to a master to ascertain the amount of damages, and in the mean time the bill is not dismissed, nor is there a decree for costs, the decree is not a final one, from which an appeal will lie to this court, although there is a perpetual injunction granted. *Barnard v. Gibson*, 650.
3. The amount of damage which will follow from restraining a party from using a machine held under a patent right is a proper consideration to be addressed to the Circuit Court, but does not constitute a ground of appeal.
4. The meaning of the forty-third rule of this court is, that, if a judgment or decree in the court below be rendered more than thirty days before the commencement of the term of this court, and the record be not filed within the first six days of the term, the appellee or defendant in error may docket the case, and move for its dismissal as the rule prescribes. *United States v. Boisdore*, 658.
5. But if the judgment or decree of the court below be rendered less than thirty days before the commencement of the term of this court, the rule does not apply. *Ib.*

ATTACHMENT.

See BANKRUPTCY, 4-9.

ATTORNEY.

1. It was error in the court below to reject the testimony of an attorney upon the ground of his being security for costs, when the party for whom he was security had already obtained a judgment against his adversary, and also upon the ground of his being interested, when he held certain notes only for the purpose of paying the money over to his clients when recovered. *Patton v. Taylor*, 132.

BANKRUPTCY.

1. By the fifth section of the United States Bankrupt Act (3 Stat. at L., 444), the surety upon a promissory note had a right to prove the demand against the maker, who became a bankrupt, and by the fourth section the bankrupt was discharged from all debts which were provable under the act. *Mace v. Wells*, 272.
2. Therefore, when the surety paid the note to the creditor, after the discharge of the bankrupt, and brought suit against the bankrupt for the amount, he was not entitled to recover it. *Ib.*
3. The proviso of the second section of the Bankrupt Act, passed on the 19th of August, 1841, preserves all liens which may be valid by the laws of the States respectively. *Peck v. Jenness*, 612.
4. In some of the States attachments are issued on mesne process, by which the property seized is made to await the result of the suit. This constitutes a lien, which is saved by the proviso in the Bankrupt act. *Ib.*
5. The various kinds of liens explained. *Ib.*
6. Therefore, where an attachment was issued and the defendants afterwards applied for the benefit of the Bankrupt Act, a plea of bankruptcy was not sufficient to prevent a judgment from being rendered condemning the property under attachment. *Ib.*
7. The fourth section of the statute, if it stood alone, would make a plea of bankruptcy a good plea in bar in discharge of all debts; but if the whole statute be construed together, this is not the result. *Ib.*
8. A rejoinder, setting forth that the District Court of the United States had decided that the attachment was not a valid lien upon the property, was not a good rejoinder. *Ib.*
9. The District Court could not oust the State court of its jurisdiction, which had already attached. *Ib.*
10. A decree of the District Court of the United States, sitting in bankruptcy, whereby a person proceeded against, *in invitum*, was declared to be a bankrupt, is sufficient evidence, as against those who were not parties to the proceeding, to show that there was a debt due to the petitioning creditor, that the bankrupt was a merchant or trader within the meaning of the act; and that he had committed an act of bankruptcy. *Shawhan v. Wheritt*, 627.
11. The first section of the Bankrupt Act declares that the making of any fraudulent conveyance, assignment, sale, gift, or other transfer of lands, tenements, goods, or chattels, is the commission of an act of bankruptcy. *Ib.*
12. No creditor can, by instituting proceedings in a State court, after the commission of an act of bankruptcy by his debtor, obtain a valid lien upon the property conveyed by such fraudulent deed, if he has notice of the commission of an act of bankruptcy by the debtor. It passes to the assignee of the bankrupt for the benefit of all the creditors. *Ib.*
13. A lien thus acquired is not saved by the proviso of the second section of the bankrupt law. That proviso does not protect liens which are inconsistent with the second and fifth sections of the act, and these sections declare such a lien to be void. *Ib.*

BOUNDARIES OF STATES.

1. The western and northern boundary-lines of the State of Missouri, as described in the first article of the constitution of that State, were as follows:—from a point in the middle of the Kansas River, where the same empties into the Missouri River, running due north along a meridian line, to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines, making said line correspond with the Indian boundary-line; thence east from the point of intersection last aforesaid, along the said parallel, to the middle of the channel of the main fork of the said River Des Moines; thence, etc., etc. *Missouri v. Iowa*, 660.
2. The constitution of the State of Missouri was adopted in 1820. But in

BOUNDARIES OF STATES—(*Continued.*)

- 1816 an Indian boundary-line had been run by the authority of the United States, which, in its north course, did not terminate at its intersection with the parallel of latitude which passed through the rapids of the River Des Moines, and in its east course did not coincide with that parallel, or any parallel of latitude at all. *Ib.*
3. Missouri claimed that this north line should be continued until it intersected a parallel of latitude which passed through certain rapids in the River Des Moines, and from the point of intersection be run eastwardly along the parallel to these rapids. *Ib.*
 4. Iowa claimed that this Indian boundary-line was protracted too far to the north; that by the term "rapids of the River Des Moines" were meant certain rapids in the Mississippi River, known by that name, and that the parallel of latitude must pass through these rapids; the effect of which would be to stop the Indian boundary-line in its progress north, before it arrived at the spot which had been marked by the United States surveyor. *Ib.*
 5. There being a bill and a cross-bill, each State is a defendant, and this court can pass such a decree as the case requires. *Ib.*
 6. The southern boundary-line of Iowa is coincident with, and dependent upon, the northern boundary-line of Missouri. *Ib.*
 7. Iowa is bound by the acts of its predecessor, the government of the United States, which had plenary jurisdiction over the subject as long as Iowa remained a Territory; and the United States recognized the Indian boundary-line,—1st. By treaties made with the Indians; 2d. By the acts of the general land-office; 3d. By Congressional legislation. *Ib.*
 8. On the other hand, there are no rapids in the River Des Moines so conspicuous as to justify the claim of Missouri. *Ib.*
 9. This court therefore adopts the old Indian boundary-line as the dividing line between the two States, and decrees that it shall be run and marked by commissioners. *Ib.*

CARRIERS.

See CONSTITUTIONAL LAW, 5.

CERTIFICATE OF DIVISION.

1. Although the motion under argument in the Circuit Court was addressed to its discretion, yet if the questions which arose and upon which the judges differed involved the right of the matter, this court will entertain those questions. *United States v. Chicago*, 185.
2. So, also, where the questions are several in number, and so material as to decide the whole case, this court will not dismiss them, provided they appear to have arisen at one time, at one stage of the cause, and to have involved little beyond one point. *Ib.*
3. Where an appeal, from a Circuit Court, sitting in chancery, is brought up to this court upon a certificate of division in opinion, and the certificate states that the court was not able to agree in opinion, one of the judges being of opinion that a decree should be rendered for the complainants, and the other that a decree should be rendered for the defendants, this was not such a distinct statement of the point or points upon which the judges differed as would give this court jurisdiction. *Sadler v. Hoover*, 646.

CHANCERY.

1. A bill in chancery filed by the purchaser of land against his vendor, to restrain the collection of the purchase-money, upon the two grounds of want of title in the vendor and his subsequent insolvency, without charging fraud or misrepresentation, cannot be sustained. *Patton v. Taylor*, 132.
2. Relief will not be given on the ground of fraud, unless it be made a distinct allegation in the bill, so that it may be put in issue in the pleadings. *Ib.*
3. When a mortgagor and mortgagee are citizens of the same State, and the mortgagee assigns the mortgage to a citizen of another State for the

CHANCERY—(Continued.)

- purpose of throwing the case into the Circuit Court, it is necessary, in order to divest the court of jurisdiction, to bring home to the assignee a knowledge of this motive and purpose. Till then, he must be considered an innocent purchaser without notice. *Smith v. Kernochen*, 198.
4. If the assignment was only fictitious, then the suit would in fact be between two citizens of the same State, over which the court would have no jurisdiction. *Ib.*
 5. The question of jurisdiction, in such a case, should have been raised by a plea in abatement. Upon the trial of the merits, it was too late. *Ib.*
 6. A former suit in chancery between the original parties to the mortgage involving directly the validity of that instrument, in which suit a bill to foreclose was dismissed, upon the ground that the mortgage was void, was good evidence in an ejectment brought by the assignee claiming to recover by virtue of the same mortgage. The instrument had been declared void by a court of competent jurisdiction, and neither the parties nor their privies could recover upon it. *Ib.*
 7. There is no difference, upon this point, between a decree in chancery and a verdict at law. Either constitutes a bar to a future action upon the instrument declared to be void. The authorities upon this point examined. *Ib.*
 8. The highest court of the State of Alabama having decided that the original mortgagee (an incorporated company) violated its charter in the transaction which led to the mortgage, this court adopts its construction of a statute of that State. *Ib.*
 9. Where an issue is sent by a court of equity to be tried by a jury in a court of law, and exceptions are taken during the progress of the trial at law, these exceptions must be brought before the court of equity and there decided, in order to give this court cognizance of them when the case is brought up by appeal. *McLaughlin v. Bank of Potomac*, 220.
 10. A question, whether or not certain conveyances were fraudulent, was properly submitted to the jury. Fraud is often a mixed question of law and fact, and the jury can be instructed upon matters of law. *Ib.*
 11. A note held by a bank for a debt due to it, and renewed from time to time with the same maker and indorser, is sufficient to constitute the bank a creditor in claiming to have conveyances set aside as fraudulent, although the note was not due when the conveyances were made, and the present note was renewed afterwards. *Ib.*
 12. Where the original debtor had made a conveyance of property to a trustee for the purpose of securing his indorser, it was not necessary to pursue and exhaust that trust-property before proceeding against the indorser and his property. A judgment had been obtained against the administrator of the indorser, which fixed his liability. *Ib.*
 13. This judgment against the administrator in which a devastavit had been suggested, and a return of *nulla bona* to an execution, was good evidence against the surety of the administrator, and also against the fraudulent grantee of the intestate. *Ib.*
 14. Although the creditor has a remedy against the surety of the administrator by a suit at law upon the bond, yet he may also file a bill in chancery against all the parties who are concerned in the alleged fraud, and such other persons as are interested in the estate. *Ib.*
 15. Although by the laws which prevail in the District of Columbia, the personal estate of a deceased person should be resorted to for the payment of debts before applying to the realty; yet, where the administrator was found guilty of a devastavit, and the personal property was chiefly left in the hands of the surety, who was also the person charged with being a fraudulent grantee of the intestate, the general rule is not applicable. *Ib.*
 16. In a bill against the fraudulent grantee, it is not necessary to aver a deficiency of the personal estate of the deceased; it is sufficient to aver the fraud and the waste of the personal assets by such grantee, who was also the personal representative. *Ib.*

CHANCERY—(Continued.)

17. There is a defence peculiar to courts of equity founded on lapse of time and the staleness of the claim, where no statute of limitations directly governs the case. In such cases, the court often act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches in prosecuting rights, or long acquiescence in the assertion of adverse rights. *Wagner v. Baird*, 234.
18. The rule upon this subject, originally laid down by Lord Camden, in *Smith v. Clay*, 3 Brown's Chancery Reports, page 640, note, and adopted by this court in 1 Howard, 189, again asserted. *Ib.*
19. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor. *Ib.*
20. The party guilty of such laches cannot screen his title from the just imputation of staleness, merely by the allegation of an imaginary impediment or technical disability. *Ib.*
21. The facts in this case bring it within the operation of the above principles, and the bill must, therefore, be dismissed. *Ib.*
22. The Commercial and Railroad Bank of Vicksburg assigned all its property to trustees, reciting that "the embarrassed situation of the bank and the present inability of its debtors to meet their liabilities, and by consequence that the bank was unable to pay its debts promptly, rendered it proper that a general assignment should be made for the benefit of its creditors and completion of the railroad"; it therefore assigned all of its property, real, personal, and mixed, to trustees, with authority to sell the effects assigned, to collect all debts due to the institution, to complete the railroad, for which purpose they were authorized to borrow a sum not exceeding \$250,000, to allow claims against the bank of a certain description, and out of the proceeds collected first to pay the principal and interest of the above loan; after the completion of the said road, dividends were to be made *pro rata* amongst the creditors of the bank who had filed their claims, should there not be a sufficient amount to pay all the claims; the trustees to receive eight thousand dollars each per annum for their services. *Bodley v. Goodrich*, 276.
23. This deed was fraudulent and void as to all creditors of the bank who did not become parties to it by filing their claims. *Ib.*
24. Where a decree in chancery refers the matter to a master to ascertain the amount of damages, and in the mean time the bill is not dismissed nor is there a decree for costs, the decree is not a final one from which an appeal will lie to this court, although there is a perpetual injunction granted. *Barnard v. Gibson*, 650.
25. The amount of damage which will follow from restraining a party from using a machine held under a patent right, is a proper consideration to be addressed to the Circuit Court, but does not constitute a ground of appeal. *Ib.*
26. If an exception be taken to an answer in chancery upon the ground that certain allegations in the bill are neither answered, admitted, nor denied, it becomes necessary to inquire whether the facts charged in the allegations are material, and might, if established, contribute to support the equity of the complainant. *Hardeman v. Harris*, 726.
27. If they will not, the omission to answer the allegations is not a good ground for exception to the answer, and the exception must be overruled. *Ib.*
28. Therefore, when a bill charged that certain notes were given for the purchase of slaves introduced into the State of Mississippi, as merchandise and for sale, after the first day of May, 1833, and the answer omitted to notice the allegation, such omission was not a good ground for an exception. *Ib.*

CHANCERY—(*Continued.*)

29. This court has repeatedly decided that the fact stated is no defence to a suit at law. Still less can it be a defence in equity. *Ib.*
30. Where an allegation in the bill was, that the complainants were only sureties, and that their principal was insolvent, the answer was not justly subject to exception for omitting to notice it. The fact in no way strengthened the equity of the complainants. *Ib.*
31. The general rules stated which govern a court of equity in opening accounts and sustaining claims which are barred by the statute of limitations. *Stearns v. Page*, 819.

CHICAGO.

SEE LANDS, PUBLIC, 1-4.

COMMERCIAL LAW.

1. A note held by a bank for a debt due to it, and renewed from time to time with the same maker and indorser, is sufficient to constitute the bank a creditor in claiming to have conveyances set aside as fraudulent, although the note was not due when the conveyances were made, and the present note was renewed afterwards. *McLaughlin v. Bank of Potomac*, 220.
2. Where the original debtor had made a conveyance of property to a trustee for the purpose of securing his indorser, it was not necessary to pursue and exhaust that trust-property before proceeding against the indorser and his property. *Ib.*
3. By the fifth section of the United States Bankrupt Acts, (5 Stat. at L., 444,) the surety upon a promissory note had a right to prove the demand against the maker, who became a bankrupt, and by the fourth section the bankrupt was discharged from all debts which were provable under the act. *Mace v. Wells*, 272.
4. Therefore, where the surety paid the note to the creditor, after the discharge of the bankrupt, and brought suit against the bankrupt for the amount, he was not entitled to recover it. *Ib.*

COMMON CARRIERS.

SEE CONSTITUTIONAL LAW, 5.

CONSTITUTIONAL LAW.

SEE JURISDICTION.

1. Although no State could establish a permanent military government, yet it may use its military power to put down an armed insurrection, too strong to be controlled by the civil authority. The State must determine for itself what degree of force the crisis demands. *Luther v. Borden*, 1.
2. After martial law was declared, an officer might lawfully arrest any one who he had reasonable grounds to believe was engaged in the insurrection, or order a house to be forcibly entered. But no more force can be used than is necessary to accomplish the object; and if the power is exercised for the purposes of oppression, or any injury wilfully done to person or property, the party whom, or by whose order, it is committed would undoubtedly be answerable. *Ib.*
3. A statute of the State of Alabama, directing that promissory notes given to the cashier of a bank may be sued and collected in the name of the bank, is a law which effects the remedy only, and although passed after the note was executed, does not impair the obligation of the contract. *Crawford v. Branch Bank of Mobile*, 279.
4. Besides, the record does not show that the question of the consistency of the statute with the Constitution of the United States was raised in the State court; and therefore a writ of error issued under the twenty-fifth section of the Judiciary Act must be dismissed on motion. *Ib.*
5. Statutes of the States of New York and Massachusetts, imposing taxes upon alien passengers arriving in the ports of those States, declared to be contrary to the Constitution and laws of the United States, and therefore null and void. *Passenger Cases*, 283.

COPYRIGHT.

1. By the sixth section of the act of February 3d, 1831, entitled "An act to

COPYRIGHT—(*Continued.*)

amend the several acts respecting copyrights," the penalty of fifty cents on each sheet whether printed or being printed, or published, or exposed to sale, is limited to the sheets in possession of the party who prints or exposes them to sale. *Backus v. Gould*, 798.

2. It does not apply to those sheets which he had published, or procured to be published whether they were found in his possession or not. *Ib.*

COURTS MARTIAL.

SEE NAVY, 1, 2.

CUSTOMS.

SEE DUTIES.

DUTIES.

1. By the fifth section of the tariff act passed on the 30th of August, 1842, (5 Stat. at L., 555,) a duty of thirty per cent. is imposed on "India-rubber oil-cloth, webbing, shoes, braces or suspenders, or any other fabrics or manufactured articles composed wholly or in part of India-rubber." *Lawrence v. Allen*, 785.
2. In the ninth section among other articles declared to be exempt from duty, is "India-rubber in bottles or sheets, or otherwise unmanufactured." *Ib.*
3. By these sections, the duty of thirty per cent. is payable upon shoes made of India-rubber in Brazil, although they are made by the same process as bottles or sheets, provided they come to this country in a condition to be worn without further material labor on them here, and were actually worn in this form, and provided they were called, in the language of commerce "India-rubber shoes"; and of these two facts the jury ought to judge. *Ib.*
4. The articles come within the letter of the law, and the act of 1842 was framed with a desire to tax whatever might compete with our own manufactures. *Ib.*
5. When India-rubber is made into a shape suitable for use, it may be considered a manufactured article. Originally, it was made into the shape of boots, to be used and worn in Brazil, and afterwards into shoes; but not intended to be sent abroad as a raw material. *Ib.*
6. The fact, that the material of which these shoes are made is used for other articles of manufacture, after their importation, does not change this view of the subject. *Ib.*

EQUITY.

SEE CHANCERY.

ERROR, (WRIT OF).

1. Where the judgment of the state court may be sustained on error, on any ground within the exclusive cognizance of that court, this court will not reverse such judgment merely because some point which can be examined here was erroneously ruled. *Erwin v. Lowry*, 172.
2. Where the court below ordered that a sum of money should be paid over by the party in whose favor they decided to the losing party, the reception of this money by the losing party, before the writ of error was sued out, will not be a sufficient cause for dismissing the writ of error.
3. Where the highest court of a State affirmed the judgment of a court below, because no transcript of the record was filed in the appellate court, such affirmation cannot be reviewed by this court under the twenty-fifth section of the Judiciary Act. *Matheson v. Branch Bank of Mobile*, 260.
4. The intention of the parties to raise a constitutional question is not enough. It must be actually raised and decided in the highest court of the State. *Ib.*

EVIDENCE.

1. In a suit brought by a marine against the commanding officer of a squadron, in which the marine alleged that he was illegally detained on board after the expiration of his term of enlistment, it was competent for the defendant to give in evidence a letter which he had written to the Secretary of the Navy relating to the circumstances of the enlistment. *Wilkes v. Dinsman*, 89.

EVIDENCE—(*Continued.*)

2. An acquittal of the commanding officer by a court-martial, when tried for the same acts by order of the government, is not admissible evidence in a suit by an individual. *Ib.*
3. The burden of proof, that the officer exceeded his powers, is upon the party complaining; the rule of law being, that the acts of a public officer, on public matters, within his jurisdiction and where he has a discretion, are to be presumed legal till shown by others to be unjustifiable. *Ib.*
4. It is not enough to show that he committed an error in judgment, but it must have been a malicious and wilful error. *Ib.*
5. It was error in the court below to reject the testimony of an attorney upon the ground of his being security for costs, when the party for whom he was security had already obtained a judgment against his adversary, and also upon the grounds of his being interested, when he held certain notes only for the purpose of paying the money over to his clients, when recovered. *Patton v. Taylor*, 132.
6. A former suit in chancery between the original parties to a mortgage, involving directly the validity of that instrument, in which suit a bill to foreclose was dismissed upon the ground that the mortgage was void, was good evidence in an ejectment brought by an assignee claiming to recover by virtue of the same mortgage. *Smith v. Kernochen*, 198.
7. The instrument had been declared void by a court of competent jurisdiction, and neither the parties nor their privies could recover upon it. *Ib.*
8. There is no difference, upon this point, between a decree in chancery and a verdict at law. Either constitutes a bar to a future action upon the instrument declared to be void. *Ib.*
9. A judgment against an administrator, in which a devastavit had been suggested and a return of *nulla bona* to an execution, was good evidence against the surety of the administrator, and also against the fraudulent grantee of the intestate. *McLaughlin v. Bank of Potomac*, 220.

EXECUTORS AND ADMINISTRATORS.

SEE LOUISIANA, 1-6.

1. A judgment against an administrator, in which a devastavit had been suggested and a return of *nulla bona* to an execution, was good evidence against the surety of the administrator, and also against the fraudulent grantee of the intestate. *McLaughlin v. Bank of Potomac*, 220.
2. Although the creditor has a remedy against the surety of the administrator by a suit at law upon the bond, yet he may also file a bill in chancery against all the parties who are concerned in the alleged fraud, and such other persons as are interested in the estate.—*Ib.*
3. Although, by the laws which prevail in the District of Columbia, the personal estate of a deceased person should be resorted to for the payment of debts before applying to the reality; yet, where the administrator was found guilty of a devastavit and the personal property was chiefly left in the hands of the surety, who was also the person charged with being fraudulent grantee of the intestate, the general rule is not applicable. *Ib.*
4. In a bill against the fraudulent grantee, it is not necessary to aver a deficiency of the personal estate of the deceased; it is sufficient to aver the fraud and the waste of the personal assets by such grantee, who was also the personal representative. *Ib.*

FRAUDULENT CONVEYANCES.

1. A note held by a bank for a debt due to it, and renewed from time to time with the same maker and indorser, is sufficient to constitute the bank a creditor in claiming to have conveyances set aside as fraudulent, although the note was not due when the conveyances were made, and the present note was renewed afterwards. *McLaughlin v. Bank of Potomac*, 220.
2. Where the original debtor had made a conveyance of property to a trustee for the purpose of securing his indorser, it was not necessary to

FRAUDULENT CONVEYANCES—(*Continued.*)

- pursue and exhaust that trust-property before proceeding against the indorser and his property. A judgment had been obtained against the administrator of the indorser, which fixed his liability. *Ib.*
3. In a bill against the fraudulent grantee, it is not necessary to aver a deficiency of the personal estate of the deceased; it is sufficient to aver the fraud and the waste of the personal assets by such grantee, who was also the personal representative. *Ib.*
 4. The Commercial and Railroad Bank of Vicksburg assigned all its property to trustees, reciting that "the embarrassed situation of the bank and the present inability of its debtors to meet their liabilities, and by consequence that the bank was unable to pay its debts promptly, rendered it proper that a general assignment should be made for the benefit of its creditors and completion of the railroad"; it therefore assigned all its property, real, personal, and mixed, to trustees, with authority to sell the effects assigned, to collect all debts due to the institution, to complete the railroad, for which purpose they were authorized to borrow a sum not exceeding \$250,000, to allow claims against the bank of a certain description, and out of the proceeds collected first to pay the principal and interest of the above loan; after the completion of the said road, dividends were to be made *pro rata* amongst the creditors of the bank who had filed their claims, should there not be a sufficient amount to pay all the claims; the trustees to receive eight thousand dollars each per annum for their services. *Bodley v. Goodrich*, 276.
 5. This deed was fraudulent and void as to all creditors of the bank who did not become parties to it by filing their claims. *Ib.*

INSURANCE.

1. In an insurance upon freight, there is no total loss of a memorandum article as long as the goods have not lost their original character, but remain in specie, and in that condition are capable of being shipped to their destined port, no matter what may be the extent of the damage. *Hugg v. Augusta Insurance and Banking Co.*, 595.
2. If, however, the articles are not capable of being carried, in specie, to the port of destination, arising from danger to the health of the crew or to the safety of the vessel; or the public authorities at the port of distress order the articles to be thrown overboard, from fear of disease, there would be a total loss. *Ib.*
3. In construing the contract of insurance upon freight, the interest of the insured, or of the underwriters of the cargo, is not considered. Therefore, if the vessel is in a condition to carry on the cargo to the port of destination, or another vessel can be procured for that purpose, it is the duty of the owner of the vessel to carry it on, although it may be for the interest of the insured and insurers of the cargo to sell it at the port of distress. *Ib.*
4. If so sold, the insured cannot recover for a total loss of freight. *Ib.*
5. But although it is the duty of the owner of the vessel, either to repair his own or to procure another at the port of distress to carry on the cargo, yet, if it should be made to appear that the repairs or procurement of another vessel would necessarily produce such a retardation of the voyage as would, in all probability, occasion a destruction of the article, in specie, before it could arrive at the port of destination, or, from its damaged condition, it could not be reshipped in time, consistently with the health of the crew or safety of the vessel, or would not be in a fit condition, from pestilential effluvia or otherwise, to be carried on, it then became the duty of the master to sell the goods for the benefit of whom it might concern. *Ib.*
6. A policy of insurance upon "freight of the bark Margaret Hugg, at and from Baltimore to Rio Janerio and back to Havana or Matanzas, or a port in the United States, to the amount of \$5,000, upon all lawful goods, etc., beginning the adventure upon the said freight from and immediately following the lading thereof aforesaid at Baltimore, and

INSURANCE—(*Continued.*)

continuing the same until the said goods, wares, and merchandise shall be safely landed at the port aforesaid," upon which a greater premium was paid than was usual for the outward voyage alone, must not be construed as a policy upon the round voyage. *Ib.*

7. The insurers were, therefore, not entitled to a deduction for the outward freight. *Ib.*

IOWA.

SEE BOUNDARIES OF STATES.

JUDICIAL SALE.

1. Where a petition for the seizure and sale of the mortgaged property of a deceased person was filed, in the Circuit Court of the United States for Louisiana, against the executor of that deceased person, which petition alleged the plaintiff to be a citizen of Tennessee, and the defendant to be a citizen of Louisiana, and the proceedings went on to a sale without any objection to the jurisdiction of the court being made by the executor upon the ground of residence of parties, it is too late for a curator, appointed in the place of the executor, to raise the objection in a State court against a purchaser at sale, and attempt to prove that the Circuit Court had no jurisdiction over the case, because the executor was not a citizen of Louisiana. Evidence dehors the record cannot be introduced to disprove it. *Erwin v. Loury*, 172.
2. Where a lien existed on property by a special mortgage before the debtor's death, and the property passed, with the lien attached, into the hands of an executor, and was in the course of administration in the Probate Court, the Circuit Court of the United States had jurisdiction, notwithstanding, to proceed against the property, enforce the creditor's lien, and decree a sale of the property. And such sale was valid. *Ib.*
3. The Circuit Court of the United States, having jurisdiction over the parties and subject-matter, and having issued an order of seizure and sale, the presumption must be, in favor of a purchaser, that the facts which were necessary to be proved in order to confer jurisdiction were proved. No other court can inquire into those facts. *Ib.*
4. Although the marshal did not give the notice required by law to the executor against whom the petition was filed, yet, if the executor was served with process on the spot where the property was situated and where the advertisements were posted up, was present at the sale and named one of the appraisers, and requested that the land and negroes should be sold together, he cannot afterwards impeach the sale because formal steps were not strictly complied with. Nor can the curator who subsequently represented the same estate. *Ib.*

JURISDICTION.

1. At the period of the American Revolution, Rhode Island did not, like the other States, adopt a new constitution, but continued the form of government established by the charter of Charles the Second, making only such alterations, by acts of the Legislature, as were necessary to adapt it to their condition and rights as an independent State. *Luther v. Borden*, 1.
2. But no mode of proceeding was pointed out by which amendments might be made. *Ib.*
3. In 1841 a portion of the people held meetings and formed associations, which resulted in the election of a convention to form a new constitution, to be submitted to the people for their adoption or rejection. *Ib.*
4. This convention framed a constitution, directed a vote to be taken upon it, declared afterwards that it had been adopted and ratified by a majority of the people of the State, and was the paramount law and constitution of Rhode Island. *Ib.*
5. Under it, elections were held for Governor, members of the Legislature, and other officers, who assembled together in May, 1842, and proceeded to organize the new government. *Ib.*
6. But the charter government did not acquiesce in these proceedings. On

JURISDICTION—(*Continued.*)

- the contrary, it passed stringent laws, and finally passed an act declaring the State under martial law. *Ib.*
7. In May, 1843, a new constitution, which had been framed by a convention called together by the charter government, went into operation, and has continued ever since. *Ib.*
 8. The question which of the two opposing governments was the legitimate one, viz., the charter government, or the government established by the voluntary convention, has not heretofore been regarded as a judicial one in any of the State courts. The political department has always determined whether a proposed constitution or amendment was ratified or not by the people of the State, and the judicial power has followed its decision. *Ib.*
 9. The courts of Rhode Island have decided in favor of the validity of the charter government, and the courts of the United States adopt and follow the decisions of the State courts in questions which concern merely the constitution and laws of the State. *Ib.*
 10. The question whether or not a majority of those persons entitled to suffrage voted to adopt a constitution cannot be settled in a judicial proceeding. *Ib.*
 11. The Constitution of the United States has treated the subject as political in its nature, and placed the power of recognizing a State government in the hands of Congress. Under the existing legislation of Congress, the exercise of this power by courts would be entirely inconsistent with that legislation. *Ib.*
 12. The President of the United States is vested with certain power by an act of Congress, and in this case he exercised that power by recognizing the charter government. *Ib.*
 13. Where a petition for the seizure and sale of the mortgaged property of a deceased person was filed, in the Circuit Court of the United States for Louisiana, against the executor of that deceased person, which petition alleged the plaintiff to be a citizen of Tennessee, and the defendant to be a citizen of Louisiana, and the proceedings went on to a sale without any objection to the jurisdiction of the court being made by the executor upon the ground of residence of parties, it is too late for a curator, appointed in the place of the executor, to raise the objection in a State court against a purchaser at the sale, and attempt to prove that the Circuit Court had no jurisdiction over the case, because the executor was not a citizen of Louisiana. Evidence dehors the record cannot be introduced to disprove it. *Erwin v. Lowry*, 172.
 14. Where a lien existed on property by a special mortgage before the debtor's death, and the property passed, with the lien attached, into the hands of an executor, and was in the course of administration in the Probate Court, the Circuit Court of the United States had jurisdiction, notwithstanding, to proceed against the property, enforce the creditor's lien, and decree a sale of the property. And such sale was valid. *Ib.*
 15. The Circuit Court of the United States, having jurisdiction over the parties and subject-matter, and having issued an order of seizure and sale, the presumption must be, in favor of a purchaser, that the facts which were necessary to be proved in order to confer jurisdiction were proved. No other court can inquire into those facts. *Ib.*
 16. Although the motion under argument in the Circuit Court was addressed to its discretion, yet, if the questions which arose and upon which the judges differed involved the right of the matter, this court will entertain those questions. *United States v. Chicago*, 185.
 17. So, also, where the questions are several in number, and so material as to decide the whole case, this court will not dismiss them, provided they appear to have arisen at one time, at one stage of the cause, and to have involved little beyond one point. *Ib.*
 18. When a mortgagor and mortgagee are citizens of the same State, and the mortgagee assigns the mortgage to a citizen of another State, for the purpose of throwing the case into the Circuit Court, it is necessary,

JURISDICTION—(*Continued.*)

- in order to divest the court of jurisdiction, to bring home to the assignee a knowledge of this motive and purpose. Till then, he must be considered an innocent purchaser without notice. *Smith v. Kernochen*, 198.
19. If the assignment was only fictitious, then the suit would in fact be between two citizens of the same State, over which the court would have no jurisdiction. *Ib.*
 20. The question of jurisdiction, in such a case, should have been raised by a plea in abatement. Upon the trial of the merits, it was too late. *Ib.*
 21. Where an issue is sent by a court of equity to be tried by a jury in a court of law, and exceptions are taken during the progress of the trial at law, these exceptions must be brought before the court of equity and there decided, in order to give this court cognizance of them when the case is brought up by appeal. *McLaughlin v. Bank of Potomac*, 220.
 22. Where the highest court of a State affirmed the judgment of a court below, because no transcript of the record was filed in the appellate court, such affirmance cannot be reviewed by this court under the twenty-fifth section of the Judiciary Act. *Matheson v. Branch Bank of Mobile*, 260.
 23. The intention of the parties to raise a constitutional question is not enough. It must be actually raised and decided in the highest court of the State. *Ib.*
 24. Where the record does not show that the question of the consistency of a statute of a State with the Constitution of the United States was raised in the State court, this court will not entertain jurisdiction under the twenty-fifth section of the Judiciary Act. *Crawford v. Branch Bank of Mobile*, 279.
 25. A rejoinder, setting forth that the District Court of the United States had decided that the attachment was not a valid lien upon the property, was not a good rejoinder. The District Court could not oust the State court of its jurisdiction, which had already attached. *Peck v. Jenness*, 612.
 26. Where an appeal from a Circuit Court, sitting in chancery, is brought up to this court upon a certificate of division in opinion, and the certificate states that the court was not able to agree in opinion, one of the judges being of the opinion that a decree should be rendered for the complainants, and the other that a decree should be rendered for the defendants, this was not such a distinct statement of the point or points upon which the judges differed as would give this court jurisdiction. *Sadler v. Hoover*, 646.
 27. The appeal must, therefore, be dismissed, for want of jurisdiction. *Ib.*
 28. Where a decree in chancery refers the matters to a master to ascertain the amount of damages, and in the mean time the bill is not dismissed, nor is there a decree for costs, the decree is not a final one, from which an appeal will lie to this court, although there is a perpetual injunction granted. *Barnard v. Gibson*, 650.
 29. The amount of damage which will follow from restraining a party from using a machine held under a patent right is a proper consideration to be addressed to the Circuit Court, but does not constitute a ground of appeal. *Ib.*
 30. Where a vessel was run on shore by the captain in order to save the lives of those on board, and for the preservation of the cargo, by which act the vessel was totally lost, but the cargo saved and delivered to the consignee, a libel *in personam*, filed by the owner of the vessel against the consignee of the cargo, (and the result would be the same if filed against the owner of the cargo,) for contribution by way of general average, cannot be sustained in the admiralty courts of the United States. *Cutler v. Rae*, 729.
 31. Those courts have jurisdiction wherever the vessel or cargo is subject to an absolute lien, created by the maritime law; and will follow property subject to such lien into the hands of assignees. The lien, in such cases, does not depend upon possession. *Ib.*

JURISDICTION—(*Continued.*)

32. But in cases of general average, the lien is a qualified one, depends upon the possession of the goods, and ceases when they are delivered to the owner or consignee. *Ib.*
33. Whatever may be the liability of the owner after he has received his cargo, it is founded upon an implied promise to contribute to the reimbursement of the owner of the lost vessel, which promise is implied by the common law, and not by the maritime law. *Ib.*
34. The case is, therefore, beyond the jurisdiction of courts of admiralty, and the libel must be dismissed. *Ib.*
35. Where a complainant alleged that a school tax, which was levied upon his land, was contrary to the spirit and meaning of a law of the State of Ohio which exempted his property from all State taxes, and conflicted also with the terms and conditions of the leases by which he held his land, and the State court dismissed the bill, this decision of the State court cannot be reviewed by this court by a writ of error issued under the twenty-fifth section of the Judiciary Act. *Smith v. Hunter*, 738.
36. The rules which regulate cases brought up to this court under that section again examined and affirmed. *Ib.*
37. The act of 1838, (5 Stat. at L., 251,) relating to preëmption rights, provides, that "before any person claiming the benefit of this law shall have a patent for the land which he may claim, by having complied with its provisions, he shall make oath, etc., that he entered upon the land which he claims in his own right, and exclusively for his own use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatever, by which the title which he might acquire from the government of the United States should enure to the use and benefit of any one except himself, or to convey or transfer the said land, or the title which he may acquire to the same, to any other person or persons whatever, at any subsequent time." *Udell v. Davidson*, 769.
38. Where a preëmptioner sold his inchoate title, which passed ultimately into the hands of a trustee, and the trustee loaned money out of the trust fund to the preëmptioner, in order to enable him to pay the government; and the title thus obtained from the United States was conveyed by the preëmptioner to the trustee, without any reference to the trust; and the trustee was ordered by a State court to hold the property subject to the trust,—he cannot remove the case to this court, by virtue of the twenty-fifth section of the Judiciary Act. *Ib.*
39. There is no title, right, privilege, or exemption, under an act of Congress, set up by the party and decided against him by the State court. By his own showing, he has acquired no title from the United States. *Ib.*
40. The allegation is, that a fraud was perpetrated upon the government, and another meditated upon the *cestui que trust*, both of which this court is called upon to maintain and carry out. *Ib.*
41. The case is dismissed, for want of jurisdiction. *Ib.*
42. Where, upon the trial of a case in a State court, a party claims the land in dispute, under an authority which he alleges has been exercised by the Secretary of the Treasury, in behalf of the United States, and the decision was against the validity of the authority, the party is entitled to have his case brought to this court under the twenty-fifth section of the Judiciary Act. *Neilson v. Lagow*, 772.

JURY.

1. A question, whether or not certain conveyances were fraudulent, was properly submitted to the jury. Fraud is often a mixed question of law and fact, and the jury can be instructed upon matters of law. *McLaughlin v. Bank of Potomac*, 220.

LACHES.

- See CHANCERY, 17-21.

LANDS, PUBLIC.

1. The corporate powers of the city of Chicago have no right to open

LANDS, PUBLIC—(*Continued.*)

- streets through property belonging to the United States, adjacent to the city, although the ground had been laid out in lots and streets by the government. *United States v. Chicago*, 185.
2. Their right was limited to that part which, by a sale of the government, had become private property. *Ib.*
 3. The fact, that streets had been laid out by an agent of the government, did not amount to a dedication of them to public use, so as to vest the control over them in the city. *Ib.*
 4. The United States, having been the proprietor of all the land and reserved a part for military purposes, hold this part by a different title than where land is purchased by them in a State. *Ib.*
 5. The proviso in the second section of the act passed on the 1st of March, 1823, (3 Stat. at L., 773,) entitled, "An act for extending the time for locating Virginia military land-warrants and returning surveys thereon to the General Land-Office,"—which proviso is as follows, viz. "Provided, that no locations, as aforesaid, in virtue of this or the preceding section of this act, shall be made on tracts of lands for which patents had previously been issued, or which had been previously surveyed; and any patent which may nevertheless be obtained for land located contrary to the provisions of this act shall be considered null and void,"—protected an entry which had been made in the name of a dead man in 1822. And a subsequent conflicting entry came within the prohibition of the statute, and was therefore void. *McArthur's Heirs v. Dun's Heirs*, 262.
 6. The cases of *Galt v. Galloway*, 4 Peters, 345; *McDonald's Heirs v. Smalley*, 6 Peters, 261; *Jackson v. Clarke*, 1 Peters, 628; *Taylor's Lessee v. Myers*, 7 Wheat., 23; and *Galloway v. Finley*, 12 Peters, 264, reviewed. *Ib.*
 7. Forbes and Company obtained a grant of land in 1807 from Morales, Intendant-General under the Spanish government, which land was adjacent to Mobile, in West Florida. This grant purported to be, in part, the confirmation of a concession granted in 1796 and surveyed in 1802. The survey terminated at high-water-mark upon the river. *Kennedy's Executors v. Hunt*, 586.
 8. The grant of 1807 included the land between the then bank of the river and the high-water-mark of 1802. *Ib.*
 9. The grant of 1807 was excepted from the operation of the act of Congress passed on the 26th of March, 1804, which annulled all Spanish grants made after the 1st of October, 1800, and was recognized as a valid grant by the act of 3d March, 1819. *Ib.*
 10. An act of March 2d, 1829, confirmed an incomplete Spanish concession which was alleged to draw after it, as a consequence, certain riparian rights conflicting with those claimed under the grant of 1807. *Ib.*
 11. A decision of a State court, giving the land covered by these riparian rights to the claimants under the grant of 1807, was only a construction of a perfected Spanish title, and cannot be reviewed by this court under the twenty-fifth section of the Judiciary Act. It did not draw in question an act of Congress, or any authority exercised under the Constitution or laws of the United States. *Ib.*
 12. The case of the *United States v. King and Core* (3 Howard, 773) reviewed. *United States v. King et al.*, 833.
 13. According to the practice of Louisiana, where cases are carried to an appellate tribunal, in which the court below has decided questions of fact as well as of law, the appellate tribunal also reviews and decides both classes of questions. *Ib.*
 14. But this practice is not applicable to the courts of the United States. A writ of error in them brings up only questions of law, and questions of fact remain as unexaminable as if they had been decided by a jury below. *Ib.*
 15. Where the court below decides both law and fact, no bill of exceptions need be taken. The case then becomes like one at common law, where

LANDS, PUBLIC—(*Continued.*)

- a special verdict is found or a case is stated, in neither of which is there any necessity for a bill of exceptions. *Ib.*
16. Where the court below decides the facts, a statement of them should appear upon the record; but if such a statement be filed after judgment is entered and a writ of error sued out, it cannot be considered a part of the record, which is closed against it. *Ib.*
 17. Leaving this statement out, there is still enough in the record to enable the court to take cognizance of this case, because the defendants below asserted a legal title to be in themselves by virtue of a grant which severed the land claimed from the royal domain. *Ib.*
 18. The construction of this grant, issued in 1797, by the Baron de Carondelet, to the Marquis de Maison Rouge, is a question of law upon which this court must review the decision of the Circuit Court. *Ib.*
 19. The two grants or contracts of 1797 and 1795 must be construed together. That of 1797 refers to the one of 1795, and cannot be understood without it. *Ib.*
 20. The contract of 1795 was for the benefit of the emigrants, and must have been intended to be shown by Maison Rouge to those persons whom he was inviting to settle upon the land. No personal benefit or compensation to himself individually is provided in it. The object was to promote the policy of the Spanish government, as whose agent Maison Rouge acted, and not as the proprietor of the land. *Ib.*
 21. The contract of 1797 was intended to supply two omissions in that of 1795, namely, to designate with more particularity the place where the settlement was to be made, and to provide for a larger number of families than was mentioned in the original contract. *Ib.*
 22. For both these purposes, a certain tract of land was marked out, and "destined and appropriated" for the uses of the settlement. *Ib.*
 23. The grant of 1797 does not contain the words usually employed in Spanish colonial grants, when there was an intention to sever land from the royal domain and convey it as individual property. *Ib.*

LIEN.

See BANKRUPTCY.

1. Where a judgment was obtained in the Circuit Court of the United States for the District of Mississippi in 1839, and in 1841 the State of Mississippi passed a law, requiring judgments to be recorded in a particular way, in order to make them a lien upon property, this statute did not abrogate the lien which had been acquired under the judgment of 1839, although the latter had not been recorded in the manner required by the statute. *Massingill v. Downs*, 760.

LIMITATION OF ACTIONS.

1. There is a defence peculiar to courts of equity founded on lapse of time and the staleness of the claim, where no statute of limitations governs the case. In such cases, the court often act upon their own inherent doctrine of discouraging, for the peace of society, antiquated demands, by refusing to interfere where there has been gross laches in prosecuting rights, or long acquiescence in the assertion of adverse rights. *Wagner v. Baird*, 234.
2. The rule upon this subject, originally laid down by Lord Camden in *Smith v. Clay*, 3 Bro. Ch., 640, note, and adopted by this court in 1 Howard, 189, again asserted. *Ib.*
3. Long acquiescence and laches by parties out of possession are productive of much hardship and injustice to others, and cannot be excused but by showing some actual hindrance or impediment caused by the fraud or concealment of the party in possession, which will appeal to the conscience of the chancellor. *Ib.*
4. The party guilty of such laches cannot screen his title from the just imputation of staleness, merely by the allegation of an imaginary impediment or technical disability. *Ib.*
5. By a law of the State of Illinois, passed in 1827, "every action of covenant shall be commenced within sixteen years after the cause of such

LIMITATIONS OF ACTIONS—(Continued.)

- action shall have accrued, and not after." But by a proviso, persons beyond the limits of the State were exempted from the operation of the law, and might bring the action at any time within sixteen years after coming within the State. Afterwards, in 1837, this proviso was repealed. *Lewis v. Lewis*, 776.
6. The statute of 1827 begins to run, as to non-residents, from the time of the repeal of the saving clause, in 1837, and not before. *Ib.*
 7. The general rules stated which govern a court of equity in opening accounts and sustaining claims which are barred by the statute of limitations. *Stearns v. Page*, 819.
 8. Great caution is exercised, and the complainant is holden to stringent rules of pleading and evidence. *Ib.*
 9. He must state in his bill, distinctly, the particular act of fraud, misrepresentation, or concealment; must specify how, when, and in what manner it was perpetrated. *Ib.*
 10. The charges must be definite and reasonably certain; capable of proof and clearly proved. *Ib.*
 11. If a mistake is alleged, it must be stated with precision and made apparent, so that the court may rectify it, with a feeling of certainty that they are not committing another and perhaps greater mistake. *Ib.*
 12. And especially must there be distinct averments as to the time when the fraud, mistake, concealment, or misrepresentation was discovered, and what the discovery is, so that the court may clearly see whether, by the exercise of ordinary diligence, the discovery might not have been before made. *Ib.*

LOCAL LAW.

See LOUISIANA.

1. The courts of Rhode Island have decided in favor of the validity of the charter government, and the courts of the United States adopt and follow the decisions of the State courts in questions which concern merely the constitution and laws of the State. *Luther v. Borden*, 1.
2. The highest court of the State of Alabama having decided that an original mortgagee (an incorporated company) violated its charter in the transaction which led to the mortgage, this court adopts its construction of a statute of that State. *Smith v. Kernochen*, 198.
3. The legislature of Michigan passed an act on the 15th March, 1837, entitled "An act to organize and regulate banking associations," and on the 30th of December, 1837, an act to amend the former act. By the first, any persons were allowed to form associations for the purposes of banking upon the terms specified in the law; and by the second, the stockholders were made liable, in their individual character, under certain circumstances, for the debts of the association. *Nesmith v. Sheldon*, 812.
4. The associations formed under these acts are corporations within the meaning of the constitution of Michigan, and the acts are unconstitutional and void. *Ib.*
5. The second section of the twelfth article of the constitution forbidding the legislature from "passing any act of incorporation unless with the assent of at least two thirds of each house," the judgment of the legislature is required to be exercised upon the propriety of creating each particular corporation, and two thirds of each house must sanction and approve each individual charter. *Ib.*
6. The Supreme Court of the State of Michigan has so construed its constitution, and it is the established doctrine of this court, that it will adopt and follow the decisions of the State courts in the construction of their own statutes where that construction has been settled by the decision of their highest judicial tribunal. *Ib.*

LOUISIANA.

1. The jurisdiction of courts of probate in Louisiana is confined to cases which seek an account and settlement of effects presumed to be held by the representative of a succession. It has not jurisdiction over

LOUISIANA—(*Continued.*)

- cases of alleged fraud or waste, or embezzlement of the estate. *Four-niquet v. Perkins*, 160.
- 2. The District Courts are courts of general civil jurisdiction. *Ib.*
- 3. Hence, where a petition was filed in the Court of Probate against an administrator, praying that he might account and also be held liable for maleadministration and spoliation, it was proper to transfer the case for trial to the District Court. *Ib.*
- 4. The judgment in the District Court, being generally for the defendant, must be supposed to cover the whole case, and not to have rested upon only a branch of it, viz. a release which was pleaded by the defendant. *Ib.*
- 5. Therefore, where a bill was filed in the Circuit Court by the same petitioners against the same defendant, it was correct for that court to consider the question as *res judicata*. *Ib.*
- 6. The Louisiana decisions upon the jurisdiction of the Probate and District Courts examined. *Ib.*
- 7. According to the practice of Louisiana, where cases are carried to an appellate tribunal, in which the court below has decided questions of fact as well as of law, the appellate tribunal also reviews and decides both classes of questions. *United States v. King et al.*, 833.
- 8. But this practice is not applicable to the courts of the United States. A writ of error in them only brings up questions of law, and questions of fact remain as unexaminable as if they had been decided by a jury below. *Ib.*
- 9. Where the court below decides both law and fact, no bill of exceptions need be taken. The case then becomes like one at common law, where a special verdict is found or a case is stated, in neither of which is there any necessity for a bill of exceptions. *Ib.*
- 10. Where a court below decides the facts, a statement of them should appear upon the record; but if such a statement be filed after judgment is entered and a writ of error sued out, it cannot be considered a part of the record, which is closed against it. *Ib.*

MARINE CORPS.

SEE NAVY.

MARINE INSURANCE.

SEE INSURANCE.

MARTIAL LAW.

SEE CONSTITUTIONAL LAW, 1, 2.

MISSOURI.

SEE BOUNDARIES OF STATES.

MORTGAGE.

SEE CHANCERY.

- 1. Where a lien existed on property by a special mortgage before the debtor's death, and the property passed, with the lien attached, into the hands of an executor, and was in the course of administration in the Probate Court, the Circuit Court of the United States had jurisdiction, notwithstanding, to proceed against the property, enforce the creditor's lien, and decree a sale of the property. And such sale was valid. *Erwin v. Lowry*, 172.
- 2. When a mortgagor and mortgagee are citizens of the same State, and the mortgagee assigns the mortgage to a citizen of another State for the purpose of throwing the case into the Circuit Court, it is necessary, in order to divest the court of jurisdiction, to bring home to the assignee a knowledge of this motive and purpose. Till then, he must be considered an innocent purchaser without notice. *Smith v. Kernochen*, 198.
- 3. If the assignment was only fictitious, then the suit would in fact be between two citizens of the same State, over which the court would have no jurisdiction. *Ib.*

NAVY.

- 1. In a suit brought by a marine against the commanding officer of a squad-

NAVY—(*Continued.*)

- ron, in which the marine alleged that he was illegally detained on board after the expiration of his term of enlistment, it was competent for the defendant to give in evidence a letter which he had written to the Secretary of the Navy relating to the circumstances of the enlistment. *Wilkes v. Dinsman*, 89.
2. An acquittal of the commanding officer by a court-martial, when tried for the same acts by order of the government, is not admissible evidence in a suit by an individual. *Ib.*
 3. The act of Congress passed on the 2d of March, 1837, (5 Stat. at Large, 153,) authorized a reenlistment of marines to serve during the cruise then about to take place, they being included in the denomination of "persons enlisted for the navy." Prior laws recognize marines as a part of the navy. *Ib.*
 4. Under the same act, the commander of the squadron had power to detain a marine after the term of his enlistment expired, if, in the opinion of the commander, public interest required it. *Ib.*
 5. At the time of enlistment, the marine corps being subject to such laws and regulations as might, at any time, be established for the better government of the navy, it was a part of the contract of enlistment that the party should obey them, whenever passed. It was, therefore, no objection to such laws, that they were passed after his entering the service. *Ib.*
 6. By the third article for the government of the navy, the commander is authorized to cause twelve lashes to be inflicted, for scandalous conduct, without a court-martial. Every successive disobedience of orders a fresh offence, and subject to additional punishment. *Ib.*
 7. The commander had not only a right to cause corporal punishment to be inflicted, but to resort to any reasonable measures necessary to insure submission. He had, therefore, a right to imprison the refractory party on shore, if done without malice. *Ib.*
 8. The commander was acting as a public officer, invested with certain discretionary powers, and cannot be made answerable for any injury, when acting within the scope of his authority, and not influenced by malice, corruption, or cruelty. His position is quasi judicial. *Ib.*
 9. Hence, the burden of proof that the officer exceeded his powers is upon the party complaining; the rule of law being, that the acts of a public officer, on public matters, within his jurisdiction and where he has a discretion, are to be presumed legal till shown by others to be unjustifiable. *Ib.*
 10. It is not enough to show that he committed an error in judgment, but it must have been a malicious and wilful error. *Ib.*

NOTICE.

1. Although the marshal did not give the notice required by law to the executor against whom the petition was filed, yet, if the executor was served with process on the spot where the property was situated and where the advertisements were posted up, was present at the sale and named one of the appraisers, and requested that the land and negroes should be sold together, he cannot afterwards impeach the sale because formal steps were not strictly complied with. Nor can the curator who subsequently represented the same estate. *Erwin v. Loury*, 172.

OFFICERS, PUBLIC.

1. The burden of proof, that the officer exceeded his powers, is upon the party complaining; the rule of law being, that the acts of a public officer, on public matters, within his jurisdiction and where he has a discretion, are to be presumed legal till shown by others to be unjustifiable. *Wilkes v. Dinsman*, 89.
2. It is not enough to show that he committed an error in judgment, but it must have been a malicious and wilful error. *Ib.*

PLEAS AND PLEADINGS.

1. A bill in chancery filed by the purchaser of land against his vendor, to restrain the collection of the purchase-money upon the two grounds of

PLEAS AND PLEADINGS—(*Continued.*)

- want of title in the vendor and his subsequent insolvency, without charging fraud or misrepresentation, cannot be sustained. *Patton v. Taylor*, 132.
2. Relief will not be given on the ground of fraud, unless it be made a distinct allegation in the bill, so that it may be put in issue in the pleadings. *Ib.*
 3. The question of jurisdiction arising in a case where a mortgagor and mortgagee were citizens of the same State, and the mortgagee had assigned the mortgage to a citizen of another State, should have been raised by a plea in abatement. Upon the trial of the merits, it was too late. *Smith v. Kernochen*, 198.
 4. In a bill against a fraudulent grantee of a deceased person, it is not necessary to aver a deficiency of the personal estate of the deceased; it is sufficient to aver the fraud and the waste of the personal assets by such grantee, who was also the personal representative. *McLaughlin v. Bank of Potomac*, 220.
 5. A general demurrer by the defendant, assigning reasons why the plaintiff should not recover, must be considered and treated as a special demurrer, which is an objection for defects in form. *Tyler v. Hand*, 573.
 6. In this case, none of the reasons are valid as objections to a matter of form, but the court, nevertheless, will examine them as if brought forward to sustain a general demurrer. *Ib.*
 7. Where bonds were given to the President of the United States, and his successors in office, for the use of the orphan children of certain Indians, and the declaration so averred, it was not a good cause of demurrer to allege that they were taken without authority of law. They were valid instruments, though voluntarily given and not prescribed by law; and as the demurrer admitted the facts stated in the declaration, the defendant was estopped from contesting the right of the obligee to sue. *Ib.*
 8. So, also, it was not a valid reason to say, in support of the demurrer, that the bonds were given without consideration; and if there was any illegality in the transaction, it should have been pleaded in bar. *Ib.*
 9. Where the defendant demurred, and assigned as a reason, that the place of abode of the plaintiff, or his right to sue, was not set forth in the declaration, it was demurring in abatement, and the judgment of the court, if the demurrer be overruled, will be final for the plaintiff. *Ib.*
 10. So, also, it is not a good ground for the defendant to say that the plaintiff has shown no title to the bonds. It is not a good objection to a matter of form or substance. *Ib.*
 11. Nor was it a good ground of demurrer to say that the *cestui que* use was not named in the declaration. The demurrer admits that the recital of the use in the declaration was correct, and it was not necessary for the plaintiff to set out the individual uses, when the uses were general in the bonds. *Ib.*
 12. A rejoinder, setting forth that the District Court of the United States had decided that the attachment was not a valid lien upon the property, was not a good rejoinder. The District Court could not oust the State court of its jurisdiction, which had already attached. *Peck v. Jenness*, 612.
 13. Although, as a general rule, all issues, whether of law or fact, ought to be disposed of in some way by the court below, yet, under the particular circumstances of this case, which presented the appearance upon the record of a demurrer which had not been disposed of, this court will presume that the demurrer had been withdrawn or overruled. *Townsend v. Jemison*, 706.
 14. The thirty-second section of the Judiciary Act (1 Stat. at L., 91) forbids a reversal of the judgment on account of the omission of the clerk to record such waiver or overruling. *Ib.*
 15. The statutes of jeofails examined. *Ib.*

PLEAS AND PLEADINGS—(*Continued.*)

16. Where there are special and general counts in a declaration, and a demurrer is filed which affects only the special counts, and the party goes to trial upon the general issue plea to the general counts, a verdict and judgment so obtained will not be set aside because the demurrer was undisposed of. A statute of Mississippi, where the cause was tried, allows one good count to sustain a judgment. *Ib.*
17. Where the plea was bad, and the demurrer was to a replication to this bad plea, the first fault in pleading was committed by the defendant, and judgment against him was properly given. *Ib.*
18. If an exception be taken to an answer in chancery, upon the ground that certain allegations in the bill are neither answered, admitted, nor denied, it becomes necessary to inquire whether the facts charged in the allegations are material, and might, if established, contribute to support the equity of the complainant. *Hardeman v. Harris*, 726.
19. If they will not, the omission to answer the allegations is not a good ground for exception to the answer, and the exception must be overruled. *Ib.*
20. Therefore, when a bill charged that certain notes were given for the purchase of slaves introduced into the State of Mississippi, as merchandise and for sale, after the first day of May, 1833, and the answer omitted to notice the allegation, such omission was not a good ground for an exception. *Ib.*
21. This court has repeatedly decided that the fact stated is no defence to a suit at law. Still less can it be a defence in equity. *Ib.*
22. Where an allegation in the bill was, that the complainants were only sureties, and that their principal was insolvent, the answer was not justly subject to exception for omitting to notice it. The fact in no way strengthened the equity of the complainants. *Ib.*
23. Where the complainant and respondent in a suit in chancery entered into a mutual covenant, that, pending the suit, they would divide the money between them in certain proportions, and that if, in the said suit, it should be decreed that these were not the correct proportions, they would respectively pay the difference so as to conform to the decree; and the result of said suit was a dismissal of the complainant's bill, with costs; and the respondent brought an action of covenant against the complainant, reciting the agreement in his declaration, with an averment, that, by virtue of the decree of dismissal, he was entitled to receive a certain sum of money,—this declaration was bad. *McDonald v. Hobson*, 745.
24. The agreement looked to a judicial determination of the rights of the parties in some court of law or equity, and the declaration omits all averment that these rights had been so settled. *Ib.*
25. The decree of dismissal did not, of itself, prove that the complainant owed the respondent any thing. It only proved that the respondent was not indebted to the complainant. *Ib.*
26. Nor is this defect in the declaration cured by verdict. It cannot be presumed that evidence was given upon the trial to show that some decree had adjusted the amount due, as claimed in the declaration, because this would be presuming against the record, which recites the substance of the decree. A total omission to state any cause of action is a defect which a verdict will not cure. *Ib.*
27. The averment of the *virtute cuius* is insufficient either as matter of law or fact;—as law, because no such legal consequence could follow from the premises, and as fact, because the averment was in contradiction to the record itself. *Ib.*

POLITICAL QUESTIONS.

See CONSTITUTIONAL LAW, 1, 2; JURISDICTION, 1-12.

POST-OFFICE DEPARTMENT.

1. Where a running account is kept at the Post-Office Department between the United States and a postmaster, in which all postages are charged to him, and credit is given for all payments made, this amounts to an

POST-OFFICE DEPARTMENT—(*Continued.*)

- election by the creditor to apply the payments, as they are successively made, to the extinguishment of preceding balances. *Jones v. United States*, 681.
2. This the creditor has a right to do in the absence of instructions from the debtor. *Ib.*
 3. The English decisions and those of this court examined. *Ib.*
 4. The act of Congress of 1825 (4 Stat. at L., 102), which exonerates the sureties if balances are not sued for within two years after they occur, does not apply to this case, because, by this mode of keeping the account, the balance due from the postmaster is thrown upon the last quarter. *Ib.*

PRACTICE.

See LOUISIANA.

1. Where the court below ordered that a sum of money should be paid over by the party in whose favor they decided to the losing party, the reception of this money by the losing party, before the writ of error was sued out, will not be a sufficient cause for dismissing the writ of error. *Erwin v. Lowry*, 172.
2. Although the motion under argument in the Circuit Court was addressed to its discretion, yet, if the questions which arose and upon which the judges differed involved the right of the matter, this court will entertain those questions. *United States v. Chicago*, 185.
3. So, also, where the questions are several in number, and so material as to decide the whole case, this court will not dismiss them, provided they appear to have arisen at one time, at one stage of the cause, and to have involved little beyond one point. *Ib.*
4. Where an issue is sent by a court of equity to be tried by a jury in a court of law, and exceptions are taken during the progress of the trial at law, these exceptions must be brought before the court of equity and there decided, in order to give this court cognizance of them when the case is brought up by appeal. *McLaughlin v. Bank of Poto-mac*, 220.
5. The meaning of the forty-third rule of this court is, that, if a judgment or decree in the court below be rendered more than thirty days before the commencement of the term of this court, and the record be not filed within the first six days of the term, the appellee or defendant in error may docket the case, and move for its dismissal as the rule prescribes. *United States v. Boisdore's Heirs*, 658.
6. But if the judgment or decree of the court below be rendered less than thirty days before the commencement of the term of this court, the rule does not apply. *Ib.*
7. The conditions under which a party is permitted and a magistrate authorized to take a deposition *de bene esse* by the thirtieth section of the Judiciary Act are,—
 - 1st. That the witness lives at a greater distance from the place of trial than one hundred miles.
 - 2d. Or is bound on a voyage to sea.
 - 3d. Or is about to go out of the United States.
 - 4th. Or out of such district to a greater distance from the place of trial than one hundred miles before the time of trial.
 - 5th. Or is ancient or very infirm. *Harris v. Wall*, 693.
8. And to entitle himself to read the deposition upon the trial, the party must show,—
 - 1st. That the witness is dead.
 - 2d. Or gone out of the United States.
 - 3d. Or to a greater distance than one hundred miles from the place where the court is sitting.
 - 4th. Or that, by reason of age, sickness, or bodily infirmity, he is unable to travel and appear at court. *Ib.*
9. The authority or jurisdiction conferred on the magistrate is special, and confined within certain limits or conditions, and the facts calling for the

PRACTICE—(*Continued.*)

exercise of it should appear upon the face of the instrument, and not be left to parol proof. *Ib.*

10. Therefore, where the magistrate, in his notice to the opposite party, only said that the witness was about to "depart the State," and in his certificate omitted to state the reason for taking the deposition, it was not competent for the party, at the trial, to supply the defect by proving that the witness was about to go out of the United States. *Ib.*
11. The service of the notice upon the opposite party should be certified by the magistrate as well as the marshal. *Ib.*
12. When counsel have signed an agreement that a deposition may be read in evidence to the jury, it is too late, after its reading, to ask the court to exclude from the consideration of the jury a part of the deposition. *Ib.*
13. Under the thirty-seventh rule of this court, the clerk is not bound to docket a case until the bond for costs is given. *Van Rensselaer v. Watts' Executors*, 784.

PRESUMPTION.

1. The Circuit Court of the United States, having jurisdiction over the parties and subject-matter, and having issued an order of seizure and sale, the presumption must be, in favor of a purchaser, that the facts which were necessary to be proved in order to confer jurisdiction were proved. No other court can inquire into those facts. *Erwin v. Lowry*, 172.

TARIFF.

See DUTIES.

VENDOR AND PURCHASER.

1. A bill in chancery filed by the purchaser of land against his vendor, to restrain the collection of the purchase-money, upon the two grounds of want of title in the vendor and his subsequent insolvency, without charging fraud or misrepresentation, cannot be sustained. *Patton v. Taylor*, 132.

WITNESSES.

1. It was error in the court below to reject the testimony of an attorney upon the ground of his being security for costs, when the party for whom he was security had already obtained a judgment against his adversary, and also upon the ground of his being interested, when, as a mere naked trustee, he held certain notes only for the purpose of paying the money over to his clients, when recovered. *Patton v. Taylor*, 132.

WRIT OF ERROR.

See ERROR.











